

ASSEMBLY BILL

No. 854

Introduced by Assembly Member Arambula

February 26, 2009

An act to add Section 273 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 854, as introduced, Arambula. Employment regulation and supervision: unpaid wages.

Existing law provides for the regulation of farm labor contractors and of garment manufacturers by the Labor Commissioner and for their licensure and registration, respectively, by the commissioner.

This bill would require an applicant for licensure as a farm labor contractor, for registration as a garment manufacturer, for renewal or reinstatement of the license or registration, and for a change in key personnel, to submit a statement under penalty of perjury as to whether he or she has satisfied all requirements involving unpaid wages in a final court judgment, as defined, a final order issued by the commissioner, or an accord. The bill would require the commissioner to deny the application if the statement shows unpaid wages, unless the applicant submits a bond or cash deposit to guarantee payment of the wages or a notarized accord demonstrating satisfaction of the obligation. The bill would require the commissioner to suspend the license or registration of a farm labor contractor or a garment manufacturer who made a false representation in the statement and would make reinstatement contingent on the applicant demonstrating compliance with the unpaid wages requirements or submitting an accord showing satisfaction of that obligation. The bill would require a licensee or registrant to notify the commissioner within 90 days of a final court

judgment, final order issued by the commissioner, or an accord imposing requirements relating to unpaid wages and submit with the notice security, as previously described, for the unpaid wages. The bill would prohibit a licensee or registrant from having a person who is a named judgment debtor in a final court order or order issued by the commissioner for unpaid wages serving in a key personnel capacity and would require the commissioner to suspend the license or registration of a person who violates this prohibition. The bill would require a licensee or registrant to pay to the Labor Commissioner all reasonable costs incurred in suspension proceedings under its provisions.

Because the bill would require representations in the statement by the applicant to be made under penalty of perjury, it would impose a state-mandated local program by expanding the crime of perjury.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 273 is added to the Labor Code, to read:
- 2 273. (a) The following definitions apply for purposes of this
- 3 section:
- 4 (1) "Farm labor contractor" has the same meaning as set forth
- 5 in Section 1682.
- 6 (2) "Final judgment issued by a court" means a judgment with
- 7 respect to which all possibility of a direct attack, by way of appeal,
- 8 motion for a new trial, or motion pursuant to Section 663 of the
- 9 Code of Civil Procedure to vacate the judgment, has been
- 10 exhausted and also includes any final arbitration award where the
- 11 time to file a petition for a trial de novo or a petition to vacate or
- 12 correct the arbitration award has expired, and no petition is
- 13 pending.
- 14 (3) "Garment manufacturer" means a person engaged in garment
- 15 manufacturing as described in Section 2671.
- 16 (4) "Licensee" has the same meaning as set forth in Section
- 17 1682.

1 (5) "Registrant" means a person who holds a valid and
2 unrevoked garment manufacturer registration.

3 (b) The Labor Commissioner shall require an applicant for any
4 of the following to submit a statement under penalty of perjury as
5 to whether the applicant has satisfied all requirements involving
6 unpaid wages imposed by a final judgment issued by a court or by
7 a final order issued by the Labor Commissioner or by an accord:

8 (1) Licensure as a farm labor contractor.

9 (2) Registration as a garment manufacturer.

10 (3) Renewal or reinstatement of a farm labor contractor license
11 or a garment manufacturer registration.

12 (4) A change in the persons identified pursuant to Section 1689
13 or subparagraph (B) of paragraph (1) of subdivision (a) of Section
14 2675.

15 (c) Notwithstanding any other provision of law, the Labor
16 Commissioner shall not approve an application described in
17 subdivision (b) if the statement submitted with it shows that the
18 applicant has failed to satisfy all requirements involving unpaid
19 wages, as described in subdivision (b), unless the applicant submits
20 either of the following to the Labor Commissioner:

21 (1) A bond or a cash deposit, in addition to any required by
22 Section 240, 1684, 1688, 2675, or 2679, in an amount sufficient
23 to guarantee payment of the unpaid wages.

24 (2) A notarized accord between the applicant and the other
25 parties to the judgment, order, or accord demonstrating that the
26 applicant has satisfied all requirements involving unpaid wages
27 imposed by the judgment, order, or accord.

28 (d) Notwithstanding any other provision of law, if the Labor
29 Commissioner determines after granting an application described
30 in subdivision (b), that the applicant made a false representation
31 on the statement he or she submitted, the Labor Commissioner
32 shall suspend the farm labor contractor license or garment
33 manufacturer registration effective on the date of its issuance,
34 renewal, or reinstatement. The license or registration shall remain
35 suspended until the applicant satisfies either of the following
36 requirements:

37 (1) Documents to the satisfaction of the Labor Commissioner
38 that he or she has satisfied all requirements involving unpaid wages
39 imposed by a final judgment issued by a court or by a final order
40 of the Labor Commissioner or by an accord.

1 (2) Files with the Labor Commissioner a notarized accord as
2 described in paragraph (2) of subdivision (c).

3 (e) (1) A licensee or registrant shall notify the Labor
4 Commissioner in writing within 90 days of the date of a final
5 judgment issued by a court, a final order issued by the Labor
6 Commissioner, or an accord that imposes on the licensee or
7 registrant requirements involving unpaid wages. If the licensee or
8 registrant fails to comply with this notification requirement, the
9 Labor Commissioner shall suspend the license or registration on
10 the date that the Labor Commissioner is informed, or is made
11 aware of, the judgment, order, or accord. The suspension shall
12 remain in effect until the licensee or registrant satisfies either of
13 the requirements described in subdivision (d).

14 (2) A licensee or registrant who notifies the Labor Commissioner
15 of a judgment, order, or accord pursuant to paragraph (1), shall
16 file with the notice a bond or a cash deposit meeting the criteria
17 of paragraph (1) of subdivision (c).

18 (f) (1) The Labor Commissioner may reduce the amount of a
19 bond or cash deposit required by this section upon proof, to the
20 satisfaction of the Labor Commissioner, of partial satisfaction of
21 the requirements involving unpaid wages imposed by a final
22 judgment issued by a court, a final order issued by the Labor
23 Commissioner, or an accord. The Labor Commissioner shall not
24 reduce the bond or cash deposit amount below the unpaid wage
25 balance. Upon full satisfaction of the requirements involving
26 unpaid wages, the Labor Commissioner may terminate the bond
27 or cash deposit requirement.

28 (2) Notwithstanding paragraph (1), within one year from the
29 date of filing the bond or cash deposit pursuant to paragraph (1)
30 of subdivision (c) or paragraph (2) of subdivision (e), the applicant
31 shall submit a notarized accord between the applicant and the other
32 parties to the judgment, order, or accord demonstrating that he or
33 she has satisfied all requirements involving unpaid wages imposed
34 by the judgment, order, or accord. The Labor Commissioner shall
35 suspend the license or registration of a person who fails to file the
36 notarized accord within that timeframe.

37 (g) The failure of a licensee or registrant to maintain a bond
38 required by this section shall result in the automatic suspension of
39 his or her license or registration.

1 (h) (1) A licensee or registrant shall not allow a person who is
2 a judgment debtor in a final judgment issued by a court or in a
3 final order issued by the Labor Commissioner that imposes
4 requirements that have not been satisfied in their entirety involving
5 unpaid wages to serve in a capacity described in Section 1689 or
6 subparagraph (B) of paragraph (1) of subdivision (a) of Section
7 2675.

8 (2) The Labor Commissioner shall suspend the license of a farm
9 labor contractor or the registration of a garment manufacturer who
10 violates the provisions of paragraph (1). The Labor Commissioner
11 shall reinstate the license or registration upon the resignation of
12 the person named as a judgment debtor or complete satisfaction
13 of the unpaid wages requirements.

14 (i) A person whose license or registration is suspended pursuant
15 to this section shall pay to the Labor Commissioner all reasonable
16 costs incurred by the Labor Commissioner in proceedings relating
17 to the suspension.

18 (j) This section shall not apply to an applicant for a farm labor
19 contractor license or a garment manufacturer registration or to a
20 licensee or registrant when the unpaid wages, as described by this
21 section, have been discharged in a bankruptcy proceeding.

22 SEC. 2. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.